

Shaffer, Caleb (he/him/his)

From: Richard A. Du Bey <rdubey@omwlaw.com>
Sent: Monday, September 26, 2022 11:44 AM
To: Leefers, Kristin
Cc: Melody W. Warren; ed.carlson@vigor.net; alan.sprott@vigor.net; pspadaro@intell-group.com; Jennifer L. Sanscrainte; Shaffer, Caleb; Novak, Madi; Mairs, Stephanie; Prestbo, Kim
Subject: OBJECTION TO UNTIMELY EPA STATEMENT OF POSITION AND REQUEST THAT NEUTRAL ATTORNEY ADVISE RA TO EXCLUDE SAME—From the Formal Dispute before the Regional Administrator scheduled on September 28, 2022

Dear Ms. Leefers,

DTNA and VIGOR (Performing Parties) are presenting their objection and request for relief to you, in your capacity as neutral advisor to the RA.

As you know, Performing Parties initiated dispute resolution under Paragraph 48 of the ASAOC, and following an unsuccessful informal process, did on July 12, 2022 submit a timely request for Formal Dispute Resolution before the RA. Our meeting with the RA is scheduled to take place in two days, on September 28.

On September 21, 2022 Performing Parties received (and we understand that the RA also received), an untimely response to our Formal Dispute Statement. Paragraph 48 of the ASAOC provides that EPA may submit a statement of position within 20 days of its receipt of Performing Parties' Formal Dispute Statement. In this instance, EPA has submitted its statement 51 days after Performing Parties submitted their statement and just 5 business days before the scheduled Formal Dispute before the RA.

Region 10 CERCLA Program's material noncompliance with the plain language of ASAOC and resulting untimely submittal of its lengthy position statement—at this late date—is fundamentally unfair and prejudicial to the interests of Performing Parties. Accordingly, we ask that the untimely filing be excluded from and not be considered by the RA in this Formal Dispute Proceeding.

Respectfully submitted this 26th day of September, 2022.

Richard Allan Du Bey

Richard A. Du Bey | Attorney

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On Sep 26, 2022, at 08:23, Richard A. Du Bey <rdubey@omwlaw.com> wrote:

Kris,

Your welcome.

Richard

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On Sep 26, 2022, at 08:20, Leefers, Kristin <Leefers.Kristin@epa.gov> wrote:

Good Morning Mr. Du Bey,

In response to your question about virtual location – yes, I am aware of the Teams meeting set up by EPA and I have the link. I was not sure if that was a placeholder for a forthcoming Zoom invitation (since Zoom was mentioned in past emails) or whether the group was planning to use Teams. Teams is EPA's preferred platform so as long as everyone has that link, let's proceed with using it.

Thanks for the clarification.

Kris

Kris Leefers
Assistant Regional Counsel
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From: Richard A. Du Bey <rdubey@omwlaw.com>
Sent: Saturday, September 24, 2022 10:08 PM
To: Leefers, Kristin <Leefers.Kristin@epa.gov>
Cc: Melody W. Warren <mwarren@omwlaw.com>; ed.carlson@vigor.net; alan.sprott@vigor.net; pspadaro@intell-group.com; Jennifer L. Sanscrainte <jsanscrainte@omwlaw.com>; Shaffer, Caleb <Shaffer.Caleb@epa.gov>; Novak, Madi <Novak.Elisabeth@epa.gov>; Mairs, Stephanie <Mairs.Stephanie@epa.gov>; Prestbo, Kim <Prestbo.Kim@epa.gov>
Subject: Agenda for Formal Dispute Meeting with the Regional Administrator on September 28, 2022

Dear Ms. Leefers,

Thanks for your informational email and EPA's proposed agenda for the September 28 Formal Dispute. You mentioned our setting up a zoom meeting, but are you aware that RA Sixkiller has already set up a teams meeting? Ted was included on the roster for that meeting and you were not.

Please confirm that you would like the Performing Parties to set up the call and if so, please provide us with a list of the EPA attendees and their email addresses.

Thanks again for your email.

Richard

Richard A. Du Bey | Attorney

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On Sep 23, 2022, at 15:35, Leefers, Kristin <Leefers.Kristin@epa.gov> wrote:

Good Afternoon Mr. Du Bey,

As I believe you are aware, I am the attorney assisting the Regional Administrator regarding the formal dispute raised by the Respondents in the statement dated July 12, 2022. The Regional Administrator has reviewed the proposed agenda sent to Ted Yackulic dated September 14, 2022.

Please note that in accordance with paragraph 48 of the ASAOC, the formal dispute resolution meeting scheduled next week is not a hearing or quasi-hearing, as indicated by your proposed agenda. The purpose of the meeting is to provide the Respondents the opportunity to present their case to the Regional Administrator, and to allow the Regional Administrator to ask clarifying questions. The EPA Superfund program will also have representatives from the Swan Island Basin team present at the meeting. They will primarily be in listening mode and will also be available to answer clarifying questions if requested. In light of this, please see the attached agenda for the meeting on September 28, 2022.

It is my understanding this meeting will be conducted via Zoom. Will someone from your office be providing the link to the Zoom meeting? Additionally, can you provide me with a list of the expected participants on behalf of the Respondents?

Sincerely,
Kris

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